

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Mark A. Kutney, Development Services Director 954-797-1101
Prepared by: Marcie Oppenheimer Nolan, Planning Supervisor

SUBJECT: Resolution – Developers Agreement
DA 9-1-03 Warren Henry/Regency Square
4801 – 4991 SW 148th Avenue

AFFECTED DISTRICT: Mayor and District 4

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, WARREN HENRY AUTOMOBILE, INC., WCDP LLP, AND CHELSEA AT IVANHOE HOMEOWNERS ASSOCIATION, INC., FOR IMPROVEMENTS ASSOCIATED WITH THE DEVELOPMENT OF TWO NEW CAR DEALERSHIPS INCLUDING THE CREATION OF A COMMUNITY PARK AND A MULTIPURPOSE TRAIL; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: The Town of Davie held a public hearing on an administrative rezoning for the Regency Plat on November 5, 2003. Prior to this request, Warren Henry automobiles had proposed the development of a Jaguar car dealership, Infiniti car dealership, parking garage and future phase, submitted on October 15, 2002. At the public hearing, Chelsea at Ivanhoe Homeowners Association stated several concerns regarding traffic, lighting, and noise. The residents of Chelsea have been working with the developer to mitigate their concerns and a revised site plan and developer's agreement have been drafted for approval by the Town. The agreement provides for the dedication of a community park accessed through the Chelsea at Ivanhoe development along a multipurpose trail formerly known as SW 50th Street (Palomino Drive). The improvements to both the multipurpose trail and dedication and construction of the community park will be performed by the developer. In addition, the developer has proposed an 8 foot high sound wall along the rear property line and the replacement of the existing security arm with a security gate. The agreement, as written, authorizes the Mayor, Town Administrator and Town Attorney to enter into the Agreement as a party for the dedication of the Community Park and creation of a multi-purpose trail/greenway within the right-of-way of SW 50th Street and the site plan related enhancements such as walls, landscape buffers, sign height and location, as well as, providing permits for a guard gate for the Chelsea at Ivanhoe development.

PREVIOUS ACTIONS: N/A

CONCURRENCES: N/A

FISCAL IMPACT: N/A

RECOMMENDATION(S): Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

Attachment(s): Resolution and Developers Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, WARREN HENRY AUTOMOBILE, INC., WCDP LLP, AND CHELSEA AT IVANHOE HOMEOWNERS ASSOCIATION, INC., FOR IMPROVEMENTS ASSOCIATED WITH THE DEVELOPMENT OF TWO NEW CAR DEALERSHIPS INCLUDING THE CREATION OF A COMMUNITY PARK AND A MULTIPURPOSE TRAIL; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Warren Henry Automobile and WCDP LLP proposes to construct two new car dealerships buildings and associated parking garage within 'Tract B' of the Regency Plat; and

WHEREAS, Chelsea at Ivanhoe Homeowners Association, has expressed concerns regarding proposed impact to their community; and

WHEREAS, the developer and the homeowners have agreed that the creation of a Chelsea Community Park and a multipurpose trail upon the existing public right-of-way for SW 50 Street (Palomino Drive) will mitigate the impact of the proposed car dealerships; and

WHEREAS, the developer and the homeowners have agreed to the placement of an eight (8) foot high wall along the waters edge with landscaping provided along the exterior of said wall to provide a additional buffer between the existing residential uses and the proposed commercial use.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter into an Agreement, attached hereto as Exhibit "A", between Chelsea at Ivanhoe Homeowners Association, Inc, Warren Henry Automobile, Inc, and WCDP LLP and the Town of Davie to accept the dedication of a community park and creation of a multipurpose trail and provide for regulatory review and approval of development permits as specified in the Agreement.

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2003.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2003.

DEVELOPMENT & RESTRICTIVE COVENANT AGREEMENT

THIS DEVELOPMENT & RESTRICTIVE COVENANT AGREEMENT ("Agreement") made and entered into this ____ day of December, 2003 by TOWN OF DAVIE, a municipal corporation, hereinafter referred to as "Town", Warren Henry Automobile, Inc., a Florida corporation and WCDP LLP, a Florida limited liability partnership, including any of their affiliates, partners, successors or assigns, hereinafter collectively referred to as "Developer", and CHELSEA AT IVANHOE HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, hereinafter referred to as "Chelsea, Inc.".

WITNESSETH:

That,

Whereas, Developer intends to become the owner of the following described real property, which is located in the Town of Davie, Broward County, Florida and which contains approximately 13.98 acres more or less, and is legally defined as follows:

All of Tracts, B and of the Plat of Regency, according to the Plat thereof Recorded in Plat Book 121, Page 48 of the Public Records of Broward County, Florida.

(hereinafter the "Property")

Whereas, the above-referenced legal description was obtained from the sketch of a survey prepared by Pulice Land Surveyor is attached hereto, and incorporated herein by reference as Exhibit "A"; and

Whereas, Developer desires to construct (or cause to be constructed) certain new improvements on the Property consisting of two new car dealership buildings, and a parking garage, as specifically delineated in the site plan, which has been attached hereto, and incorporated herein by reference as Exhibit "B"; and

Whereas, Developer has also conceptually designated a second phase of the improvements that proposed a third care dealership building ~~with an attached garage~~, as set forth herein; and

Whereas, in order to construct the dealerships and a parking garage Developer is willing to rezone the Property from Broward County's Planned Unit Development District zoning designation to the Town's B-3, Planned Business Center District zoning designation; and

Whereas, Chelsea, Inc. is a Florida not for profit corporation, which is a homeowners association operating pursuant to the provisions of Chapter 720, Florida Statutes, and in accordance with its Articles and By-Laws has the authority to enter into this Agreement on behalf of Chelsea residential community; and

Whereas, Chelsea is an adjacent residential community consisting of privately owned homes and common areas located directly South of the Property; and

Whereas, Developer recognizes that the proposed improvements on the Property may possibly have an adverse impact upon the owners of Chelsea and is desirous of minimizing said impacts; and

Whereas, the Town, has encouraged Developer and Chelsea to hold negotiations for the purpose of amicably resolving the differences in their respective positions concerning the proposed improvements; and

Whereas, the parties, acting in good faith and in their own best interests, have in this Agreement reconciled their differences in their respective positions without the need of litigation, and have by virtue hereof arrived at a mutually acceptable resolution of their differences concerning the improvements, which will be developed on the Property; and

Whereas, except as otherwise expressly set forth herein, it is the intent of the parties hereto to make this Agreement binding upon themselves, and the successors and assigns of any of the foregoing, including, but not limited to, any and all subsequent owners of all or any portion of the above-referenced Property;

NOW THEREFORE, based upon the good and valuable considerations and undertakings herein described and each to the other delivered, and the payment by each party to the other of \$10.00, the receipt and sufficiency of all of which are hereby acknowledged, the parties agree as follows:

1. PALOMINO DRIVE AS A MULTIPURPOSE TRAIL

To prevent vehicular traffic from accessing the Regency Plaza from Palomino Drive, the Town, via Ordinance, shall simultaneously with the approval of this Agreement, approve a resolution in the form attached hereto as Exhibit "M" ("Town Resolution") clarifying that the use of Palomino Drive will be restricted from a vehicular right of way-access easement to a public, non-motorized Town greenway/passive park, multipurpose non-vehicular trail. This Town Resolution modification shall be recorded, at Developer's expense in the public records of Broward County, Florida. The portion of Palomino Drive that will be modified and closed to vehicular traffic is specifically delineated and attached hereto as Exhibit "C". The asphalt portion of the multipurpose trail shall be converted, at Developer's expense, into a lushly landscaped, and irrigated multipurpose trail with exercise activity centers and paver trails, as shown substantially on the plan

described in Exhibit “D”, which may require minor modifications following the Town’s review. The multipurpose trail and exercise activity centers shall be maintained by Town. This multipurpose trail shall continue to dead end and will not provide any means of access into the Regency Plaza.

2. CHELSEA COMMUNITY PARK

Prior to the issuance of a building permit, the Town, at Developer’s expense, shall receive title to and shall maintain the approximately 2.5 acre parcel as described composite in Exhibit “E”, to be deed restricted and utilized as a Town neighborhood park. Developer shall pay for the costs associated with recording the instruments of conveyance. Developer’s building permit shall be released as security for this action upon the Developer tendering to the Town a warranty deed or special warranty deed transferring title to the property described in Exhibit E-2 to the Town. The park shall be improved by Developer with improvements, including, but not limited to, landscaping, irrigation, basketball court, playground equipment, and park equipment, at Developer’s expense, as delineated in Exhibit “F”. The park shall be gated as shown in Exhibit “F” and shall only be accessible via the multipurpose trail gate and pedestrian access with a single lockable gate from Developer’s Property and two lockable pedestrian gates from Chelsea ~~through the pedestrian access gate described above.~~ The park shall have a lock gate that may be secured by the Town at dusk and opened during daylight hours. During normal business hours, the utility easement and lift station located at the rear of the park property, and delineated in Exhibit “F”, shall only be accessible through the park from Developer’s Property. Such paved access path ~~points~~ to the lift station shall be constructed by Developer at Developer’s expense. During emergencies or during non-business hours the utility easement and lift station may be accessed, if necessary, from Chelsea’s property. The park and all of its improvements shall be completed prior to the issuance of a temporary or final certificate of occupancy for any of the structures on the Property.

3. SECURITY GATE

The Developer recognizes Chelsea’s general concern regarding traffic and related safety issues within their community, particularly in light of the proposed development of the Property. The Developer, therefore, has agreed to make improvements ~~install or pay for the installment,~~ at Developer’s sole expense, to the existing Chelsea gates of an electronic gate with keypad access and bar reader at Chelsea’s S.W. 50th Street Entrance, as depicted in Exhibit “G”. The Developer will install three (3) video camera units to monitor vehicles existing Chelsea. The installation of the video camera units shall be the responsibility of the Developer. The cost of future maintenance and/or replacement as well as the

cost of monitoring these video camera units shall be paid by Chelsea. The Developer shall also provide or pay for providing, at Developer's expense, every current Chelsea homeowner with two (2) bar code stickers to be affixed to the Chelsea resident's vehicles. The electronic gate shall be installed prior to the issuance of a certificate of occupancy building permit for the Property and shall be constructed in conformity with plans in Exhibit "G" which have been approved by Chelsea Inc. All warranties associated with the gate installation shall be assigned by Developer to Chelsea Inc. or shall be directly in Chelsea's name. The Town and Chelsea Inc. hereby approves the rendering and operational diagram of the gate, attached hereto as Exhibit "G", and authorizes the issuance of building permits for the attached rendering. Town, moreover, hereby authorizes Developer and Chelsea Inc. to utilize the Town's road right of way and/or easement for the placement, access, installation, continual maintenance, and continual operation of Chelsea's existing gates. Developer has also agreed to provide several paved parking spaces on Chelsea property as shown on Exhibit G. the gate.

4. BOUNDARY AND LANDSCAPING

Prior to the issuance of a temporary or final certificate of occupancy for any of the car dealership buildings or garage, Developer shall construct and maintain, at Developer's expense, an eight (8) foot sound wall that will shield the entire Property from Chelsea. The location, phasing of construction, and design of the sound wall has been attached as Exhibit "H". Developer agrees that the sound wall will be designed to help prevent Chelsea from hearing or viewing any portion of the improvements on the Property at ground level. The Developer, at Developer's expense, shall install and shall maintain additional landscaping and irrigation, on either side of the sound wall, as approved by Chelsea Inc. to help beautify and to further buffer the Project. Chelsea has approved the landscaped plan and ~~shall approve~~ the vegetation to be planted. A copy of the landscape plan is attached as Exhibit "I". Chelsea understands that the vegetation must mature before its desired affect is obtained. If any of the landscaping shown on the plan shall die or become diseased then the Developer, at Developer's expense will replace the damaged vegetation. When Developer seeks to develop the third automobile dealership building, the final piece of the sound wall will be constructed to separate the neighborhood park from the Property, as delineated in Exhibit "H". Developer will may, in its discretion, install the wall and the associated landscaping for Phase II as part of its Phase I construction.

5. MAINTENANCE OF SOUND WALL

The Developer, at Developer's expense, shall maintain the sound wall described in Exhibit "H". In regards to the sound wall, such maintenance shall include, but shall not be limited to, keeping both sides of the wall properly painted and in good condition and repair at all times. The Developer shall paint the part of the sound wall visible to Chelsea a color chosen by Chelsea Inc. in writing. The sound wall shall be painted by Developer not less than once every five (5) years.

6. MAINTENANCE OF LANDSCAPING

Throughout this Agreement the Developer has agreed to construct certain improvements and install certain landscaping within its Property. Developer, at Developer's expense, is responsible for continually maintaining all of the improvements within its Property. In the event these improvements deteriorate to the point that they must be reasonably replaced, they shall be replaced in the same location with an improvement which is substantially similar in quality or producing substantially the same result as the improvement which was being replaced.

7. PROPERTY RESTRICTIONS & RESTRICTIVE COVENANTS

If the Developer improves the Property to operate an automobile dealership then the Property shall only contain a maximum of three new automobile dealership buildings. The first two automobile dealership buildings shall primarily sell new "luxury or near luxury" vehicles. The third automobile dealership building, which is proposed in phase two of the development, shall contain one luxury car dealership with an attached garage and shall primarily sell new "luxury" vehicles. The Property may also contain one freestanding garage, which will be utilized solely to store the near luxury vehicles and for employee parking. As delineated in Exhibit "B", the first near luxury or luxury automobile dealership building shall contain two near luxury or luxury automobile dealerships not to exceed 45,000 square feet and 30 feet in height. The second near luxury or luxury automobile dealership building shall contain one near luxury or luxury automobile dealership not to exceed 22,500 square feet and 30 feet in height. The third luxury automobile dealership building shall contain one new luxury automobile dealership and garage not to exceed ~~25~~25,000 square feet and 30 feet in height. Between the first two near luxury or luxury automobile dealership buildings, there may be one free standing parking garage not to exceed 225,000 square feet or 34 feet in height. The garage has been ~~shall be~~ designed not to look like a parking garage as depicted in Exhibit "B". No vehicles shall be visible on the top floor of any parking garage from ground level. If at any time any of the structure's proposed use changes, the Property and that structure may only be utilized for B 3 and shall lose any vested rights or grandfathered uses. Developer and any of Developer's partners, affiliates, successors, or assigns, shall never seek any additional automotive uses within the Regency Plaza or on

any of its out parcels. Further, Developer ~~has shall use its best efforts use its best efforts to~~ caused the Regency Plaza owners to execute and record a restrictive covenant in favor of the Town and Chelsea, prohibiting the shopping center property from being used for any additional vehicular dealerships. A copy of Regency Plaza's restrictive covenant is attached hereto as Exhibit L.

All structures on the Property, not required to be painted a specific color scheme, shall be painted earth tones or as may be approved by Chelsea, Inc. if the colors vary from the colors approved as part of Developer's site plan approval.

No more than five(5) motorcycle sales per year shall occur on the Property.

8. SIGNAGE & STRUCTURE HEIGHT

No auxiliary structure on the Property, temporary or otherwise, other than one free standing non-billboard locator sign, may exceed 30 feet. One free standing non-billboard locator sign may be permitted but shall not exceed-____ feet and shall be located adjacent to ~~only be visible from~~ I-75. Developer shall not seek any ~~size or height~~ variances concerning signage without the prior written approval of Chelsea, Inc. No cellular tower, regardless of height, shall be permitted on the Property.

9. HOURS OF OPERATION & SERVICE BAYS

The Developer shall limit sales hours of operation to Monday-Friday 9:00 a.m to 9:00 p.m.; Saturday 9:00 a.m. to 6:00 p.m.; Sunday 12:00 p.m. to 6:00 p.m. Service hours shall be 7:30 A.M. to 6:00 P.M., Monday-Friday and 7:30 A.M. to 3:00 P.M. on Saturday although employees can arrive and prepare for business commencing at 7:00 A.M. The service center shall be closed on Sunday. The sales and service centers shall be closed on Easter, Thanksgiving, Christmas, & New Year's Days. To minimize the noise associated with the servicing of vehicles, the Developer shall require that all service bay doors shall remain closed except for the brief period when vehicles enter and exit the service area. Chelsea Inc. recognizes that employees may enter the Property prior to the hours of operation, however, no customers or non-employees shall be allowed on the property during off hours.

10. LIGHTING

The Developer shall be sensitive to the fact that the Property's lighting may have an adverse affect on Chelsea. Therefore, all lighting shall be strategically located and maintained by Developer, at Developer's expense, as set forth in Exhibit "J". The lighting shall be designed to minimize the impact on the surrounding

community. All lighting shall be shielded to prevent the lights from impacting Chelsea. The manner in which these lights must be shielded is depicted in Exhibit “J”. All lighting shall not exceed the foot-candle and photometric readings set forth in Exhibit “J”. The Developer shall limit off hour lighting to the minimum legally required by the Town.

11. DELIVERIES

To minimize the noise and potential disturbances caused by deliveries to the Property, the Developer shall require that all deliveries are to be made during operational hours. No deliveries shall be made on weekends and no delivery vehicles can spend more than three hours on the Property.

12. SPECIAL EVENTS & LOUD SPEAKERS

The Developer shall not conduct any special events on the Property without prior approval from Chelsea, Inc. which approval may be withheld in Chelsea, Inc.’s discretion. In no event shall any loud speakers or additional event lighting be permitted on the Property.

13. SECURITY

Upon the commencement of construction on any portion of the Property, and continuously from that date forward, including, but not limited to, after construction on the Property is completed, the Developer shall provide twenty-four (24) hour per day, every day of the year, security on the Property. Said security shall include a ~~modern~~ state of the art surveillance system that monitors the entire Property and may also include security personnel.

14. WATER TESTING & ENVIRONMENTAL COMPLIANCE

Chelsea, Inc. is concerned that the development of the Property and the proposed use may interfere with the quality of the lake water and Chelsea’s water supply. Thus, the Developer, at Developer’s expense, shall test the lake water at least bi-annually to ensure that no contamination by the Developer has occurred. The tests shall be undertaken in accordance with the test parameters set forth on Exhibit “K”, for non-potable water governmental guidelines. A copy of all test results shall be provided to Chelsea, Inc. Developer shall indemnify the homeowners of Chelsea for any and all damage caused by Developer’s water contamination. Developer, moreover, covenants and represents that it shall follow all applicable State or Federal environmental standards concerning the

operation of the Property. A breach of any environmental standard shall be enforceable by Chelsea, Inc.

15. NEAR LUXURY & LUXURY VEHICLES

At the time of this Agreement the terms “near luxury” and “luxury” were created utilizing industry standards. For purposes of this Agreement a near luxury vehicle, at the time of this Agreement, included Jaguar, Land Rover, and Infinity. Luxury vehicles included Rolls Royce and Bentley.

16. VEHICLE SALES

Chelsea is concerned that regardless of the vehicular sales classification, that lower classified or used vehicles may be sold from the Property. Developer, therefore, has agreed that used vehicles or vehicles with a lower classification than those brands proposed to be being sold new by Developer shall be limited to 10% of each dealership's total volume annually. For purposes of this Agreement, a used vehicle or a vehicle with a lower classification shall be those vehicles sold below a price of \$17,500. Said price shall be adjusted annually based upon the annual cost of living index rate. ~~Chelsea proposed addition to Paragraph 16:~~ For purposes of determining the bi-annual adjustment in the foregoing sales price, said sales price shall be increased by the increase in the Consumer Price Index All Urban Consumers Miami, Florida, all items (1982-84+100) issued by the Bureau of Labor Statistics of the U. S. Department of Labor (hereinafter referred to as “Index”) determined each six (6) months commencing from the month that this Agreement is signed by all parties. (If the Index is no longer published, the index of consumer prices in Miami most closely comparable to the Index shall be used.) In no event shall the sales price be below \$17,500.00 for purposes of this paragraph.

17. TEST DRIVE ROUTE

Chelsea is concerned that vehicular test drives for all of Developer's vehicles and for other vehicles utilized in conjunction with the Property, will occur in residential areas. Developer, therefore, will limit the test drives to I-75 North and South bound only. Test drivers may gain access to I-75 from Griffin Road and/or Volunteer Road utilizing the Northern two entrances of the Regency Plaza between Griffin Road and the Regency Plaza only and not the Palomino Drive entrance. Developer further agrees that no test drives shall occur within

the Town of Southwest Ranches other than I-75 Griffin Road and Sheridan Street as set forth above.

18. CONSTRUCTION HOURS

During construction of the Property, working hours will commence no earlier than 7:30 a.m. and end no later than 5:00 p.m., Monday through Friday. In the event that weekend construction is required, it will not commence before 9:00 a.m. nor continue past 5:00 p.m. No materials may be delivered to the Property except during the restricted time periods set forth in this paragraph. Developer shall instruct its General Contractor and shall help to ensure that any construction workers or other personnel involved in the construction of the Property must confine their activities on the Property to those necessary to fulfill their job related duties. ~~A written statement signed by the Developer's General Contractor acknowledging that it has been so instructed pursuant to the foregoing sentence shall be conclusive proof that Developer has complied with this paragraph.~~ This shall not be construed to prevent the personnel from patronizing the stores at Regency Plaza. Construction workers shall be instructed not to loiter in or around Chelsea's Property or the Town's park facility.

19. EMPLOYMENT PREFERENCE

The Town recognizes that the development of the Property will bring a significant amount of new jobs and revenue to the community. Developer, as a good corporate citizen, has agreed that to the extent permitted by law, Davie residents and local companies that are qualified and competitive shall be given an employment and/or contractual preference.

20. DEVELOPER'S IMPACT PAYMENT & MITIGATION FEE

Developer acknowledges that Chelsea may possibly be adversely financially impacted by the proposed improvements on the Property. Therefore, as additional consideration to Chelsea hereunder, Developer shall pay Chelsea Inc. which represents the residents of Chelsea a mitigation fee, which shall be payable as set forth in a separate Mitigation & Settlement Agreement, which shall be incorporated herein by reference and which shall be enforceable as if said terms were fully set forth herein. Said mitigation fee may be utilized in Chelsea's sole discretion.

21. AGREEMENT TO RUN WITH THE LAND

All of the provisions of this Agreement and Exhibits attached hereto shall be construed as covenants running with the Property. Developer, Chelsea, Inc., and Town, including any successors and assigns shall be bound by all of the provisions of said Agreement and Exhibits attached hereto and any amendments thereof. This Agreement and any amendments thereof shall be recorded in the Public Records of Broward County, Florida, at Developer's expense.

22. NOTICE

All notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given upon hand delivery, via overnight courier for next business day delivery, or by mailing by United States registered or certified mail, return receipt requested, postage prepaid at the addresses set forth below. Notice shall be deemed received upon hand delivery or delivery overnight courier and in the case of certified mail, three business days after said mail is deposited in an official U. S. Postal depository.

If to Developer to:

Warren H. Zinn
20800 NW 2nd Avenue
U.S. Highway 441
Miami, FL 33169

With a copy to:

David Brand
P.O. Box 69-9024
Miami, Florida 33269-9024

With a copy to:

William Laystrom, Esq.
1177 Southeast Third Avenue
Fort Lauderdale, FL 33316

If to Chelsea, Inc. to:

Gary Van Der Lan
c/o Pines Property Management
17794 S.W. 2nd Street
Pembroke Pines, FL 33029

With copy to:

Becker & Poliakoff, P.A.
c/o Alan Koslow and Keith Poliakoff
3111 Stirling Rd.
Fort Lauderdale, FL 33312

with a copy to:

David Welborn, President of Chelsea HOA
4940 SW 151 Ave.
Davie, FL 33331

If to Town to:

Town of Davie
c/o Thomas Willi, Town Administrator
6591 Orange Drive
Davie, FL 33314

with a copy to

Town of Davie
c/o Monroe Kiar, Town Attorney
6591 Orange Drive
Davie, Florida 33314

Any of the parties to this Agreement may designate another mailing address to be used for notice under this Agreement, by providing written notice to the other parties to this Agreement specifying a different address.

23. REMEDIES

The parties hereto agree that in the event that any one of them breach one or more of the terms of this Agreement, subject to any applicable grace or cure period and legal action is brought as a result thereof, the prevailing party in such litigation shall be entitled to recover its costs and reasonable attorneys fees incurred, including, but not limited to, such fees incurred prior to the institution of litigation and in litigation at both the trial and appellate levels and in bankruptcy, and in any other administrative or judicial proceeding. In the event this Agreement is breached by any party to it, it is agreed that monetary damages will not be wholly adequate to afford relief to the non-defaulting party. Therefore, the provision of this Agreement are fully enforceable by injunctive or other equitable relief and does not limit the right of any party to sue for any other damages which may be permissible under law, including monetary damages of any kind or nature.

The failure of any party to this Agreement to enforce any right, provision, covenant or condition which may be granted by this Agreement shall not constitute a waiver to take such action to enforce such right, provision, covenant or condition in the future and the failure to act at any time shall not be construed to be a waiver of the right of any party to enforce such right, provision, covenant or condition in the future ~~subject to the equitable doctrine of laches and statute of limitations.~~

All rights, remedies and privileges granted to any party to this Agreement pursuant to any terms, provisions, covenants or conditions of this Agreement shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by this Agreement or at law or in equity.

24. NON-EXCLUSIVITY OF REMEDIES

Except as expressly set forth herein, the rights and remedies of the parties shall in no manner whatsoever be limited by this Agreement. Except as otherwise provided herein, the parties may at all times seek independent enforcement of all rights and remedies available to it under law and/or in equity, including, but in no manner whatsoever limited to remedies available under municipal, county, state and/or federal laws. The parties shall also have the right at all times to seek enforcement through governmental agencies.

25. MISCELLANEOUS AND OTHER PROVISIONS

- a. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns and members.
- b. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, all of which, when taken together, shall be deemed to be a single agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. No exercise or waiver, in whole or in part, of any right or remedy provided for in the Agreement, shall operate as a waiver of any other right or remedy, except as otherwise herein provided. No delay on the part of any party in the exercise of any right or remedy shall operate as a waiver thereof ~~subject to the equitable doctrine of laches and statute of limitations.~~

- e. Whenever any determination is to be made as to action to be taken on a date specified in this Agreement, if such date shall fall upon a Saturday, Sunday or a state or federal legal holiday, the date for such determination or action shall be extended to the first business day immediately thereafter.
- f. Unless the context otherwise requires, wherever used in this Agreement, the singular shall include the plural, the plural shall include the singular and the masculine gender shall include the neuter or feminine gender and vice versa.
- g. This Agreement may not be changed orally, but may be amended only by an Amendment in recordable form signed and executed by all parties.
- h. Time shall be of the essence in the performance of this Agreement.
- i. Notice of any default shall be given to the allegedly defaulting party herein, and the allegedly defaulting party shall have fifteen (15) days to cure the default after written notice is received. In the case of an emergency, notice may be given orally, and shall be cured within forty-eight hours. Written confirmation of the emergency notice shall occur within 24 hours after the oral notice is given and shall indicate that oral notice has been given. In the event a default cannot be cured within 15 days then the cure shall occur within a reasonable time based upon the type of default.
- j. Within fifteen (15) days from written request delivered by Developer, the Town and Chelsea Inc. shall deliver to Developer a statement in writing, in recordable form, certifying (with such exceptions or modifications as may be the case: (I) that this Agreement is in full force and effect without modification; and (ii) the Developer is not currently in default of this Agreement and where specifically requested the Developer has completed a particular obligation hereunder or has complied with the particular restriction or covenant imposed upon the Developer and the Property. Specifically, and not by way of limitation, as Developer has completed each of its obligations as set forth in Paragraphs 1 through 4 of this Agreement, the Town and Chelsea, Inc. shall sign such recordable statement certifying that such is the case. In the event that the Town or Chelsea, Inc. does not timely provide such certification, then the Town and Chelsea, Inc. hereby appoints its legal counsel ~~Developer~~ as its attorney-in-fact to execute such document and record same in the Public Records of Broward County, Florida. Upon recordation, Developer shall promptly provide a copy of such recorded document to the Town and Chelsea, Inc.
- k. The parties acknowledge that this Agreement constitutes the complete and definitive agreement between them concerning the subject matter hereof and that this is the only agreement between them concerning the subject matter hereof and that this Agreement supersedes any and all previous or other

agreements, discussions or understandings that may have been made between them concerning the subject matter hereof.

- l. Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall be construed as giving Chelsea the status of a “third party beneficiary” under any of the leases or other occupancy agreements or under any other contracts for the Property or improvements thereto or concerning the operation thereof. Nothing in this Agreement shall be construed as making the parties hereto partners or joint venturers with respect to the Property, which the parties hereto agree they are not.
- m. Provided that the Developer acts timely and obtains all approvals for the Property from the Town, including the ~~proper~~ rezoning and revised site plan, as set forth in this Agreement, and provided that Developer performs each of its obligations to be performed hereunder, Chelsea Inc. on behalf of its residents agrees, to the extent allowable by law, not to oppose the construction of the improvements to the Property, or any part thereof.
- n. The parties agree that if any action relating to this contract shall be brought, venue shall lie in the State Courts of Broward County, Florida.
- o. If any portion of this Agreement is determined by any Court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of this Agreement. If any Court determines that this Agreement, or any portion hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies), or circumstance(s), such determination shall not affect the applicability hereof to any other individual, group, entity, property or circumstance.
- p. This Agreement shall become effective immediately upon execution by all of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement under the seal the day and year first above written.

CHELSEA AT IVANHOE HOMEOWNERS
ASSOCIATION, INC.

_____	By _____
Witness	David Welborn, President
_____	Attest: _____
Printed Name of Witness	Secretary

Witness

Printed Name of Witness

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by DAVID WELBORN and _____, as President and Secretary, respectively, of CHELSEA AT IVANHOE HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation.

Personally Known ____ OR
Produced Identification ____

Type of Identification

NOTARY PUBLIC - STATE OF FLORIDA

sign _____
print _____
My Commission expires:

WARREN HENRY AUTOMOBILES,
INC.

Witness

By _____
Warren H. Zinn, President

Printed Name of Witness

Witness

Printed Name of Witness

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of August, 2003, by Warren H Zinn, as President, of WARREN HENRY AUTOMOBILES, Inc, a Florida corporation.

Personally Known ____ OR
Produced Identification ____

Type of Identification

NOTARY PUBLIC - STATE OF FLORIDA

sign _____
print _____
My Commission expires:

WCDP LLP

Witness

By _____
Warren H. Zinn, Partner

Printed Name of Witness

Witness

Printed Name of Witness

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of August, 2003, by Warren H. Zinn, as Partner of WCDP LLP, a Florida limited liability partnership.

Personally Known ____ OR
Produced Identification ____

Type of Identification

NOTARY PUBLIC - STATE OF FLORIDA

sign _____
print _____

My Commission expires:

TOWN OF DAVIE

By _____
Tom Truex, Mayor

Attest:

Russell Muniz, Town Clerk

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of
August, 2003, by Tom Truex, as Mayor and Russell Muniz, as Town Clerk of the

Town of Davie, respectively.

Personally Known ____ OR
Produced Identification ____

Type of Identification

NOTARY PUBLIC - STATE OF FLORIDA

sign _____
print _____

My Commission expires:

EXHIBITS ATTACHED
UNDER SEPARATE COVER

* * * * *

THIS PAGE
INTENTIONALLY
LEFT BLANK

* * * * *